



Appeal Decision

Site visit made on 7 August 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Appeal Ref: APP/D0840/W/22/3310716

Land adjacent Awen, Wheal Rose, Scorrier, Redruth TR16 5DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Matt Harris against the decision of Cornwall Council.
 - The application Ref PA22/05017, dated 28 April 2022, was refused by notice dated 12 July 2022.
 - The development proposed is the erection of up to three dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance (the PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle, and the second (technical details consent) stage, is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
4. An applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum number of dwellings as part of the application. In this instance, permission has been sought for a minimum of one, and a maximum of three dwellings. A proposed block plan has been submitted showing how three dwellings could be located on the site. However, it is labelled as indicative, and I have treated it as such, because the application only relates to the principle of the proposed development.

Main Issue

5. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use, and the amount of development.

¹ PPG Paragraph: 012 Reference ID: 58-012-20180615

Reasons

6. The appeal site is a largely disused area of land that lies on the north-eastern edge of the settlement of Wheal Rose. The lower part of the site comprises a narrow driveway that rises up away from the road access between scrubby vegetation on either side. The higher part of the site is more open, with some outside storage, and a range of small buildings sited near to the south-eastern boundary. A pair of relatively recent houses border the lower part of the site, to the southeast, but it is otherwise surrounded by undeveloped agricultural land, and lies outside the Settlement Boundary defined by the St Agnes Neighbourhood Development Plan 2018-2030 (the Neighbourhood Plan).
7. Policies 1 and 7 of the Neighbourhood Plan say that development within the Settlement Boundary, including small-scale “infill” housing schemes will be supported, and Policy 2 supports exception sites for affordable housing. Although the supporting text to Policy 1 says that development outside the boundary will be treated as exception sites, none of the Neighbourhood Plan policies places a blanket exclusion on residential development outside the Settlement Boundary. Consequently, the fact that the appeal site lies outside the Settlement Boundary, and does not secure affordable housing, is not, in itself, determinative of the principle of the development.
8. The Council’s overall settlement strategy is set out in Policy 2 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (the Local Plan). The strategy seeks to maintain the dispersed development pattern of Cornwall, and provide housing based on the role and function of each place. Policy 3 of the Local Plan defines how development will be accommodated, based on this hierarchy of role and function. Outside specific main towns, housing growth is to be delivered through the identification of sites through Neighbourhood Plans; rounding off of settlements; development of previously developed land (PDL) within or immediately adjoining settlements; infill schemes; and rural exception sites.
9. It is common ground between the parties that the site is not identified for development by the Neighbourhood Plan, that it is not being promoted as an exception site, and that the development would not comprise infilling. Therefore, the proposal would only comply with Policy 3 of the Local Plan, if it constituted rounding off, or development of PDL within or immediately adjoining a settlement.
10. Rounding off is defined at paragraph 1.68 of the Local Plan as development on land that is substantially enclosed, but outside of the urban form of a settlement, and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth. Furthermore, it should not visually extend building into the open countryside. Further guidance is contained in the Chief Planning Officer’s Advice Note (CPOAN) titled Infill/Rounding Off, which both parties have referred to. This note advises that rounding off provides a symmetry or completion to a settlement boundary, and is not intended to facilitate continued incremental growth. It says that the history and nature of the land will be an important consideration; that proposals must be adjacent to existing development; and that suitable sites are likely to be surrounded on at least two sides by existing built development.
11. In this case, the appeal site is enclosed by hedgerows on three sides. The north-western hedgerow includes a row of substantial trees, whilst that to the

north-east is on a raised bank. Consequently, they both form physical features that would act as a barrier to further growth. Together with the house to the south-east and the road to the south-west, the site is substantially enclosed. However, while part of the site is adjacent to existing development, most of it borders open countryside, and the site extends much further north-eastwards than the adjacent house that fronts the road. As a result, the proposal would give rise to a tongue of development protruding beyond the established line of buildings into the undeveloped land to the rear. It would, therefore, visually extend building into the open countryside.

12. Furthermore, the development would result in the field to the southeast being surrounded on two sides by built development, and thus becoming a candidate for rounding off in accordance with the CPOAN advice. The proposal would not, therefore, provide a symmetry or completion to the settlement boundary, but would have the potential to facilitate continued incremental growth. As a result, I conclude that the proposal would not fulfil the criteria for rounding off in accordance with Policy 3 of the Local Plan.
13. Policy 3 of the Local Plan allows for the development of PDL within or immediately adjoining a settlement. Furthermore, Policy 21 encourages sustainably located proposals that use PDL and buildings. The appeal site adjoins the Settlement Boundary of the village, which has employment opportunities and a limited range of services. It is also close to public transport links to higher order centres, where a wider range of facilities can be obtained. It is not disputed that occupants of the development would have sustainable travel options to obtain day-to-day goods and services.
14. The National Planning Policy Framework (the Framework) defines PDL as "*land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.*" However, it specifically excludes from this definition, land that is or was last occupied by agricultural buildings, and land that was previously developed but where the remains of the permanent structure have blended into the landscape.
15. Apart from the driveway, the lower part of the site is entirely covered in foliage, with any previous buildings having now blended into the landscape. This part of the site is physically separated from the higher section by a line of vegetation and has a different character. Although it is in the same ownership, it does not appear to have any functional connection to any activities taking place in the buildings on the upper part. On the evidence before me, I cannot reasonably conclude that the extensive lower part of the site falls within the curtilage of these modest buildings. Consequently, I conclude that the lower part of the appeal site does not comprise PDL.
16. The upper part of the site has been largely cleared of vegetation and was used for a small amount of open storage, including a boat, at the time of my visit. There is a range of permanent single storey buildings and a storage container along the south-eastern periphery of the site, but their use was not readily apparent. The application form indicates that they are used for the storage of materials. Whilst the appellant contends that the site has been used for non-agricultural purposes for well in excess of 10 years, I have not been provided with any evidence to support this claim. Photographic evidence provided by the

Council seems to indicate that the lower part of the site was in agricultural use in 2011, with vegetable beds and a wheelbarrow clearly visible at this time. On the evidence before me, I am unable to conclude that all, or any of the site, has a lawful non-agricultural use, such that it comprises PDL. Therefore, the proposal is not supported by Policies 3 and 21 of the Local Plan in this regard.

17. The site lies outside the Settlement Boundary, and the proposal does not comprise any of the types of new housing that are supported by Policies 3 and 21 of the Local Plan. Consequently, it would constitute residential development in the countryside. Policy 7 of the Local Plan says that development of new homes in the countryside will only be permitted where there are identified special circumstances. The proposal does not fall within any of these exceptions, so the special circumstances required to justify the development of new housing in the countryside do not apply.
18. The site is enclosed by hedgerows on all sides, so the development would not be prominent from a wide area. Looking from the south-east, the extension of the built form beyond the existing limits of the settlement would be apparent, but it would be viewed in close association with the adjacent frontage development, and against the backdrop of trees on the north-western boundary. This line of trees would largely screen the development when approaching the site from the north-west. Furthermore, although verdant, the site does not have the same pastoral appearance as the surrounding fields, so does not make a particularly valuable contribution to the character of the wider landscape. Consequently, the impact of the development on the character and appearance of its rural surroundings would be limited.
19. It is not disputed that the site is in an accessible location, with good access to sustainable transport options to obtain everyday services and facilities. Furthermore, the limited number of dwellings proposed means that the development would be of an appropriate scale for the settlement. I am mindful that a number of other developments of a similar scale have been approved within, or on the periphery of the settlement, in recent years. However, many of these predated the making of the Neighbourhood Plan, or lie within the Settlement Boundary. None are so directly comparable to the appeal proposal that they alter my conclusion on the scheme before me.
20. For the above reasons, I conclude that the proposal would conflict with the settlement policies of the development plan. The development would therefore be contrary to Policies 2, 3, 7 and 21 of the Local Plan. Taken together, these policies seek to direct new housing to accessible locations within or adjoining settlements and to restrict development in the countryside.
21. The location of the appeal site is within the zone of influence of the Fal and Helford Special Area of Conservation (SAC), which is designated for its saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays, estuaries, and reefs. It also lies within the zone of influence of the Penhale Dunes SAC, which is designated for its fixed and shifting dune habitats and humid dune slacks.
22. The Cornwall European Sites Mitigation Supplementary Planning Document (July 2021) (the SPD) identifies that increases in population are placing greater pressure from recreational activity on the features of interest for which these SACs are designated. It sets out mitigation strategies through strategic access

management and monitoring (SAMM), which are to be funded by contributions from new residential development.

23. The SPD indicates that mitigation can be secured through a financial contribution, which may be submitted with the planning application, or via a legal agreement linked to a planning permission. Alternatively, the SPD indicates that a negatively worded condition could be imposed to prevent development from commencing until a scheme to secure mitigation of the impact has been submitted to, and approved by, the Council.
24. In this case, it is not contested that a contribution towards SAMM measures is necessary to mitigate the impact of the development, and the appellant has stated that a legal agreement was being prepared before the application was refused. As no legal agreement has been submitted with the appeal, the appellant has indicated that this matter could be dealt with via a condition. However, the PPG indicates that it is not possible to impose conditions, as the terms of any permission in principle must only include site location, type of development and amount².
25. Consequently, there is no mechanism in place to secure the necessary mitigation to avoid adverse impacts on the SACs as a result of the increase in recreational pressure from occupants of the development. I am therefore unable to conclude that the development would not have a significant effect on the integrity of the internationally important sites. The legislation³ provides that permission in principle cannot be given for "habitats development", which is defined as development which is likely to have a significant effect on a qualifying European site or a European offshore marine site, such as an SAC. The appeal must, therefore, be dismissed on this ground.
26. The proposal would also be contrary to Policy 22 of the Local Plan, which seeks to secure mitigation measures for recreational impacts on European Sites, and would fail to meet the Framework's aim to conserve and enhance the natural environment.
27. It is not disputed that the site is located in a former mining area, leading to a likelihood of ground contamination that may be incompatible with a residential use, unless adequate remediation measures are implemented. The Council contends that the lack of supporting information to demonstrate the extent of contamination, or the mitigating measures that would be necessary, makes the proposal unacceptable in principle. However, the PPG makes it clear that local authorities cannot list the information they require for applications for permission in principle in the same way they can for applications for planning permission⁴.
28. Both Policy 16 of the Local Plan and the advice in the PPG seek to ensure that a site is suitable for its new use, and to prevent unacceptable risk from pollution, by considering the implications of land contamination through the planning process. The PPG addresses the question of whether planning permission should be refused if there are concerns about land contamination, and advises that local planning authorities should be satisfied that a proposed development will be appropriate for its location and not pose an unacceptable risk⁵. The

² Paragraph: 020 Reference ID: 58-020-20180615

³ Article 5B(1) of The Town and Country Planning (Permission in Principle) (Amendment) Order 2017

⁴ Paragraph: 012 Reference ID: 58-012-20180615

⁵ Paragraph: 009 Reference ID: 33-009-20190722

accompanying Flowchart⁶ indicates that, where it is not practicable to remediate the risk, the local planning authority should consider whether planning permission should be refused.

29. The proposal, however, is for permission in principle. It is the subsequent technical details consent that has the effect of granting planning permission for the development. The PPG advises that, when granting permission in principle, local planning authorities can provide information on the decision notice about what details should be included at the technical details stage⁷. This information may include where further impact assessment is needed by the applicant or where a particular scheme of mitigation may be required. Furthermore, the PPG makes it clear that planning conditions can be attached to a grant of technical details consent⁸, and planning obligations can also be agreed⁹.
30. There is no evidence to indicate that the site could not be made suitable for residential occupation through a scheme of remediation. The requirement for technical details consent for the proposal, before development could commence, would provide a mechanism for securing the necessary site investigations, and for the consideration of any proposals for remediation. If these did not demonstrate that the site was, or could be made suitable for its new use, technical details consent could be refused, and there would be no planning permission for the proposal. In view of this safeguard, the lack of information at this initial stage of the process does not lead me to conclude that the proposal would be contrary to Policy 16 of the Local Plan, or the advice in the PPG, which seek to protect, and alleviate risk to, people and the environment from unsafe, unhealthy, and polluted environments.

Conclusion

31. The location of the development would not accord with the settlement strategy of the development plan, and it would result in adverse impacts on the SACs because of the increase in recreational pressure from occupants. Consequently, although the proposal would have a limited impact on the rural character and appearance of the area, and there is no evidence to demonstrate that it could not be made safe for residential occupation, the site is not suitable for the proposed development.
32. For the reasons set out above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR

⁶ Paragraph: 013 Reference ID: 33-013-20190722

⁷ Paragraph: 045 Reference ID: 58-045-20180615

⁸ Paragraph: 021 Reference ID: 58-021-20170728

⁹ Paragraph: 022 Reference ID: 58-022-20180615